

**CV400-276**

PETITION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
 AO 243 (Rev. 2/95) SENTENCE BY A PERSON IN FEDERAL CUSTODY

UNITED STATES DISTRICT COURT		District: <b>Southern District of Georgia</b>
Name of Movant <b>Frederick Gorham</b>	Prisoner No. <b>09593-021</b>	Case No. <b>98-8154</b>
Place of Confinement <b>Federal Medical Center Butner, NC</b>		

UNITED STATES OF AMERICA

v **Frederick Gorham**

(name under which convicted)

## MOTION

- Name and location of court which entered the judgment of conviction under attack United States District Court of the Southern District of Georgia/ Savannah, GA
- Date of judgment of conviction January 28, 1998
- Length of sentence 235 months confinement/ 5 years supervised release.
- Nature of offense involved (all counts) Count 1: Conspiracy to Aid and Abet the Distribution of Cocaine; Count 5 and 6: Attempt to Aid and Abet the Distribution of Cocaine.
- What was your plea? (Check one)
  - Not guilty ☒
  - Guilty ☐
  - Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:
- If you pleaded not guilty, what kind of trial did you have? (Check one)
  - Jury ☒
  - Judge only ☐
- Did you testify at the trial?  
 Yes ☐ No ☒
- Did you appeal from the judgment of conviction?  
 Yes ☒ No ☐

FILED  
 U.S. DIST. COURT  
 SAVANNAH DIV  
 OCT 16 4 36 PM '00  
 CLERK  
*[Signature]*

AO 243 (Rev. 2/95)

9 If you did appeal, answer the following

(a) Name of court Eleventh Circuit Court of Appeals

(b) Result Affirmed pursuant to Eleventh Circuit Rule 36-1

(c) Date of result October 13, 1999

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11 If your answer to 10 was "yes," give the following information

(a) (1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

Yes ☐ No ☐

(6) Date of result \_\_\_\_\_

(2) Second petition, etc. Yes ☐ No ☐

[illegible]

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

(b) Conviction obtained by use of coerced confession.

AO 243 (Rev. 2/95)

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest
- (e) Conviction obtained by a violation of the privilege against self-incrimination
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled
- (i) Denial of effective assistance of counsel
- (h) Denial of right of appeal

A. Ground one: In light of new change in Law the court erred in sentencing the Movant to Elements not charged in the Indictment.

Supporting FACTS (state *briefly* without citing cases or law)

Movant's Indictment should be dismissed or sentence Vacated because, Due Process Clause of the Sixth Amend. U.S. Const., require that the **Drug Amount/ Weapon Enhancement** determined at Movant's sentencing by the Court be charge in the Indictment and decided on by a jury on the basis of Proof Beyond a Reasonable Doubt.

B. Ground two: Ineffective Assistance of Counsel

Supporting FACTS (state *briefly* without citing cases or law) Movant's sentence should be Vacated because, Trial Counsel's failure to properly object to the erroneous findings and application of contraband attributed to the Movant at sentencing pursuant to Note 12 of U.S.S.G. 2D1.1 rendered Counsel's Assistance Constitutionally Ineffective.

C. Ground three: Ineffective Assistance of Counsel

Supporting FACTS (state *briefly* without citing cases or law) Movant's conviction should be Vacated and Remand for new trial because, Trial Counsel's failure to investigate, file pretrial motion to dismiss Indictment and/ or request jury instruction based on **Government Overreaching/ Misconduct**, rendered Counsel's Assistance Constitutionally Ineffective.

AO 243 (Rev. 2/95)

- D Ground four. **Trial Court violated Movant's Statutory and Constitutional Rights; U.S. Const. Amend. Six and Fed. Rules Crim. Proc. 43(a).**

Supporting FACTS (state *briefly* without citing cases or law) Movant's conviction should be Vacated and Remanded for new trial because, Trial Judge's Ex Parte Communication with the jury during deliberation violated Movant's Constitutional and Statutory Rights to be present and to have Assistance of Counsel at every stage of his Criminal Proceeding, after several contacts between judge and jury (See Docket Sheet entry No. 204,205 and 206), pursuant to U.S. Const. Amend. Six; Fed. Rule Crim. Proc. 43(a). (See additional grounds on next page.)

- 13 If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing William O. Cox  
123 E. Liberty St. Savannah, GA 31401

(b) At arraignment and plea William O. Cox  
123 E. Liberty St. Savannah, GA 31401

(c) At trial William O. Cox  
123 E. Liberty St. Savannah, GA 31401

(d) At sentencing William O. Cox  
123 E. Liberty St. Savannah, GA 31401

AO 243 (Rev. 2/95)

**Ineffective Assistance of Counsel**

E. Ground five:

Supporting FACTS (state *briefly* without citing cases or law) Movant's sentence should be Vacated  
 and Remanded because, Trial Counsel's failure to properly raise the issue of a  
 Downward Adjustment of Movant's sentence under U.S.S.G. 3B1.2 as a **Minimal or**  
**Minor** participant rendered Counsel's Assistance Constitutionally Ineffective.

F. Ground Six: **District Court Erred in Finding that the Movant Abuse A Position of**  
**Trust Pursuant to U.S.S.G. 3B1.3.**

Supporting FACTS (state *briefly* without citing cases or law) Movant's sentence should be Vacated  
 and Remanded because, the Government's application of a Two Point Enhancement  
 for Abuse of Position of Trust was erroneously applied. During the offense which  
 the Movant stands convicted of, there was no evidence offered during trial nor at  
 sentencing that other than the Movant's normal occupation status did he do anything  
 that would have provided the Government Agents or anyone else a sense of security,  
 during the purported drug schemes, which would have derived from any action on  
 the Movant's part other than the fact that he was a **Rookie Police Officer**. The  
 Trial Court merely adopted the Presentence Report based on its's erroneous  
 conclusion and nothing else, has heaped additional **Unwarrented Pains** upon the  
 Movant in addition to the underlying offense he stands convicted of. Because the Movant  
 was a police officer, **does not** in itself trigger the enhancement.

AO 243 (Rev 2/95)

G. Ground Seven : Ineffective Assistance of Counsel

Supporting FACTS (state *briefly* without citing cases or law) Movant's sentence should be vacated  
and remanded because, Appeal Counsel's failure to raise issue on Direct Appeal of  
District Court's erroneous findings, in relying on the ambiguous state of the PSI,  
by attributing the entire amount of cocaine involved in each scenerio of the  
reverse sting in which the FBI Agents were in possession of, rendered counsel's  
assistance constitutionally ineffective.

AO 243 (Rev. 2/95)

(e) On appeal William O. Cox  
123 E. Liberty St. Savannah, GA 31401

(f) In any post-conviction proceeding \_\_\_\_\_

(g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

**Pro-Se**

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

October 11, 2000  
(Date)

\_\_\_\_\_  
Signature of Movant

**FREDERICK GORHAM**  
**09593-021**



CERTIFICATE OF SERVICE

I, Frederick Gorham, swear I have deposited into the U.S. Postal box at Federal Medical Center Butner, N.C., copies of the enclosed Motion for the below named parties:

1. Mr. Charles Bourne and  
Ms. Kathryn Aldridge  
Assistant U.S. Attorneys  
P.O. Box 8999  
Savannah, Georgia 31412

This 11<sup>th</sup> day of October, 2000.

I also request a stamped filed copy be sent to me in the self addressed stamped envelope enclosed herein. Because of my poverty, I request a copy of the above motion be sent to the above parties.

Respectfully submitted,

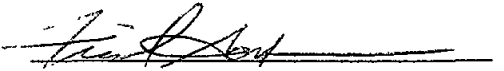


Frederick Gorham  
09593-021

PLEA FOR LIBERAL CONSIDERATION

Movant Gorham respectfully moves this Honorable Court to GRANT all liberal considerations with respect to this action pursuant to HAINES v. KERNER, 404 U.S. 519, 30 L Ed. 2d 652, 92 S. Ct. 594, as Movant is not an attorney, and has not attended any law school, nor has any professional training with respect to the filing of legal pleadings.

Respectfully submitted,



FREDERICK GORHAM #09593-02  
FEDERAL MEDICAL CENTER  
P.O. BOX 1600  
BUTNER, N.C. 27509

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA

UNITED STATES OF AMERICA, Respondent	)	CASE No. <u>98-8154</u>
	)	DOCKET No. <u>CR497-181-2</u>
		<u>CR497-181-3</u>
Vs.	)	MOTION TO JOIN CO-DEFENDANT
FREDERICK GORHAM, Movant	)	ARGUMENTS, PURSUANT TO FED.
	)	RULES CIVIL PROC. RULE 20(a)

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The Defendant, FREDERICK GORHAM, pro-se,  
respectfully moves this Honorable Court to enter an Order allowing  
the Defendant to adopt as his own the Motion pursuant to 28 USC  
2255, filed by his co-defendant KEITH LONDON.

In support of said motion, defendant shows to the Court  
the following:

1. The Defendant, FREDERICK GORHAM, was indicted with  
KEITH LONDON co-defendant in a NINE count indictment  
charging conspiracy to violate and substantive violation of 21 USC  
846 and 21 USC 841 (a)(1).

2. The Defendant, FREDERICK GORHAM, believes that  
the Government's evidence against the Defendant and his co-defendant  
will be substantially similar.

3. The Defendant further believes that the motion filed by him pro-se for his co-defendant would be identical to the motion filed by the Defendant and that to repeat the requests would unnecessarily congest the Court's file.

Wherefore, the Defendant, FREDERICK GORHAM, respectfully requests that this Court enter an Order allowing the Defendant to adopt the motion pursuant to section 28 USC 2255 filed by his co-defendant.

Dated this 11<sup>th</sup> day of OCTOBER 2000.

Respectfully submitted,



FREDERICK GORHAM  
09593-021